OPINION NO. 1109

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Tax Division

C.W. AND C.H. PUTTKAMMER, :

Petitioners :

v. : Docket No. 2218

DISTRICT OF COLUMBIA, :

Respondent :

OPINION AND JUDGMENT

The petitioners, husband and wife, resided in India during the tax periods in issue while the husband was on assignment as an employee of the United States Department of Agriculture. They claimed "currency exchange loss" deductions on thier 1970 and 1971 District of Columbia individual income tax returns because they were required, prior to making local expenditures, to convert their United States currency into rupees at an unfavorable rate of exchange. The respondent disallowed these deductions and determined income tax deficiencies against the petitioners in the amounts of $284.03 and $150.01 for the respective calendar years. This appeal to the Tax Division followed.[1/]

The sole issue involved in this case is whether the petitioners are entitled to deduct on their District of Columbia individual income tax returns "currency exchange" losses sustained them by reason of the United States Government's requirement that its employees in India covert their dollars to be expended in India into rupees at "controlled" rates of exchange rather than at the more favorable "free market" rate of exchange available on the black market.

1/ Jurisdiction is based upon D.C. Code 1973, §47-1593.

Findings of Fact

Petitioners, Charles W. and Cordelia H. Puttkammer of 2899 Audubon Terrace, N.W., in the District of Columbia, lived in New Delhi, India, from July, 1969, until May, 1973. During this period Mr. Puttkammer was an employee of the Department of Agriculture on loan to the Agency for International Development.

A condition of Mr. Puttkammer's employment was that, beginning September 2, 1969, all purchases on the local market by he and his family be made with Indian rupees. Furthermore, the petitioners were required to exchange all "dollar instruments" through the cashier at the U.S. Embassy or at other designated U.S. Government facilities. The rate of exchange at U.S. facilities was set by agreement between the two countries, and to the petitioners' chagrin, was considerably less favorable than the rate used by the numerous black market vendors found throughout New Delhi. A dollar was worth only 7.6 rupees at the "controlled" rate as compared to the approximately 12 rupees it would command on the black market.

All rupees obtained by the petitioners at the unfavorable rate of exchange were used to pay for personal expenses, i.e. for food, household employees, and personal trips.

Opinion

Petitioners, because they were required to exchange "dollar instruments" for rupees at the "controlled" rate of exchange rather than being permitted to utilize the more favorable rates on the black market,[2/] claim that they have sustained losses represented by the difference between those rates of exchange.

In their petition, which fails to cite any D.C. Code provisions, the petitioners contend that the deductions in issue may be supported either as a necessary and ordinary business expense under 26 U.S.C. 162(a); as a loss under

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2/ In their oral argument, the petitioners described the money exchange vendors as a black market. Respondent, among other things, has urged that consideration of the more favorable exchange rate from this illegal market to be contrary to public policy. The Court, however, does not believe it necessary to decide the issue in this case upon a public policy basis.

26 U.S.C. 165(c)(1) or as an expense for the production of income under 26 U.S.C. 212(1).[3/] The relevant corresponding D.C. Code provisions to those cited by the petitioners are sections 47-1557(a)(1) and 47-1557b(a)(4)(A) & (B) which state in pertinent part as follows:

> §47-1557b(a) Deductions allowed
>
> The following deductions shall be allowed from gross income in computing net income:
> (1) Expenses. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *
>
> §47-1557b(a)(4) Losses.
>
> Losses sustained during the taxable year and not compensated for by insurance or otherwise (A) if incurred in a trade or business; or (B) if incurred in any transaction entered into for the production or collection of income * * *

It is a well settled principle of tax law that tax deductions are allowable only by statute. As stated by Judge Robinson in the recent case of Lenkin v. District of Columbia, 461 F.2d 1215, 1225, 149 U.S.App., D.C. 129, 139 (1972).

> . . .it is for the legislature to subject or to immunize income from taxation, and to select the methods for doing so. * * * A deduction "depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed. [Quoting from New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934)].

Thus, "a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms." New Colonial Ice Co. v. Helvering, 292 U.S. at 440.

3/ These provisions state in pertinent part as follows:
§162(a) "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *"

§165(a) "There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.
* * *
(c) In the case of an individual, the deduction under subsection (a) shall be limited to (1) losses incurred in a trade or business* * *"
§212 "In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year (1) for the production or collection of income * * *"

The Court is of the opinion that the petitioners have failed in their attempt to point to a specific statutory provision which would permit the type of deduction at issue. Their argument, nevertheless, is a novel one to this jurisdiction.

The first obstacle which the petitioners have failed to hurdle is D.C. Code 1973, §47-1557b(b), which reads in part: "In computing net income, no deductions shall be allowed in any case for (1) Personal, living or family expenses* * *" [4/] Mr. Puttkammer testified at trial that the exchange of dollars for rupees was accomplished for the purpose of paying for personal expenses. The issue, therefore, of whether the claimed deductions would be allowed had the unfavorable money exchanges been made in the furtherance of a trade or business is not before the Court. Petitioners' reasoning on this point appears to be that the conversion of dollars to rupees at the required "controlled" rates in and of itself constituted the business expense and that the use of rupees thereafter was immaterial. The Court is of the opinion, however, that the conversion of the money must be viewed in context with the petitioners' personal expenditures. The alleged losses or expenses resulting from the difference between the "controlled" and "free" rates of exchange were, in the petitioners' case, sustained in their pursuit of personal, living and family matters. They were disassociated with Mr. Puttkammer's "trade or business" except in the sense that his failure to convert dollars at the "controlled" rate may have resulted in his dismissal for apparently illegal conduct. [5/]

[4/] The corresponding federal income tax provision is found at 26 U.S.C. §262, which provides in pertinent part as follows:

"Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."

[5/] See Volume V Martindale-Hubbell Law Directory 3398-3399 for a sketch of exchange controls in India.

Another impediment in the petitioners' path is the case of S.E. Boyer, 9 T.C. 1168 (1947). There, an officer in the U.S. Army during World War II was paid in United States currency while stationed in France and England. He was, however, required to convert his United States currency into foreign currency at officially controlled rates prior to making local expenditures. As is the situation in the present case, these official rates compared unfavorably with the rates existing on the black market. The officer, apparently acting under the assumption that his forced acceptance of an unfavorable rate of exchange constituted a deductible loss, claimed deductions on his federal income tax returns for "loss on foreign exchange." The court, in affirming the Internal Revenue's disallowance of these deductions, stated that his obtaining foreign currency at an unfavorable official rate was "not a transaction which in itself [gave] rise to such a loss." The Boyer case, absent a contrary ruling by the District of Columbia Court of Appeals, is persuasive in the case at bar.

In summary, the Court must deny the petitioner's relief because they have not advanced any specific statutory provision which would permit a tax deduction of this nature. It is, therefore,

ORDERED, ADJUDGED and DECREED that judgment be and it is hereby entered in favor of respondent.

By the Court,

W. BYRON SORRELL
JUDGE

Dated: June 10, 1974

Copies to:

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